

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER



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BRIAN C. McNEIL  
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

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DATE: MARCH 13, 2002

DOCKET NOS: E-01345A-02-0125

TO ALL PARTIES:

AZ CORP COMMISSION  
DOCUMENT CONTROL

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda.  
The recommendation has been filed in the form of an Order on:

ARIZONA PUBLIC SERVICE COMPANY  
(NEW FIXED ASSET INCOME MANAGER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 12:00 p.m. on or before:

MARCH 15, 2002  
(COMPANY HAS WAIVED THE 10 DAYS  
FOR FILING OF EXCEPTIONS)

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MARCH 19, 2002 and MARCH 20, 2002

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

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BRIAN C. McNEIL  
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL  
CHAIRMAN

3 JIM IRVIN  
COMMISSIONER

4 MARC SPITZER  
COMMISSIONER

5  
6 IN THE MATTER OF THE APPLICATION OF  
7 ARIZONA PUBLIC SERVICE COMPANY FOR  
8 AN ORDER APPROVING A NEW FIXED ASSET  
INCOME MANAGER FOR THE PALO VERDE  
NUCLEAR DECOMMISSIONING TRUST  
FUNDS.

DOCKET NO. E-01345A-02-0125

DECISION NO. \_\_\_\_\_

**ORDER**

9  
10 Open Meeting  
March 19 and 20, 2002  
Phoenix, Arizona

11 **BY THE COMMISSION:**

12  
13 Having considered the entire record herein and being fully advised in the premises, the  
14 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

15 **FINDINGS OF FACT**

16 1. Arizona Public Service Company ("APS" or the "Company") is a public service  
17 corporation certificated to provide electric service in the State of Arizona.

18 2. On February 15, 2002, APS filed an application requesting Commission approval of  
19 the selection of a new Palo Verde fixed-income decommissioning fund manager to succeed RCM  
20 Capital Management ("RCM"). Alternatively, APS requested an interim order authorizing the other  
21 Commission-approved fixed-income fund manager, Delaware Investment Advisors ("DIA") to  
22 manage the Company's fixed-income decommissioning trust funds pending Commission final  
23 approval of the replacement manager for RCM.

24 3. One of APS' current fixed-income Palo Verde decommissioning fund managers,  
25 RCM, was acquired recently by a French company, Allianz. RCM informed APS on January 31,  
26 2002, that it would no longer be in the fixed-income fund management business as of March 31,  
27 2002. Allianz already had a fixed-income fund subsidiary, Pacific Investment Management Company  
28 ("PIMCO"), and did not want the two subsidiaries to compete against each other. Allianz decided to

1 terminate RCM's fixed-income fund management business, effective March 31, 2002. RCM gave its  
2 fixed-income clients, including APS, until that date to find a replacement fund manager.

3 4. After receiving RCM's notice, APS began an expedited search for a replacement fund  
4 manager. APS identified three finalists in its original application: NISA Investment Advisors  
5 ("NISA"); Duff & Phelps Investment Management Co. ("D&P"); and PIMCO. After written and oral  
6 presentations by the three finalists, on February 28, 2002, APS selected NISA.

7 5. On March 1, 2002, APS filed a Amendment to its Application, explaining its choice of  
8 NISA. APS requested that the Commission approve its selection by March 31, 2002. Otherwise,  
9 APS would find itself in non-compliance with prior Commission decisions related to the Palo Verde  
10 decommissioning fund.

11 6. On March 8, 2002, the Commission's Utility Division Staff ("Staff") filed a Staff  
12 Report recommending approval of NISA to replace RCM.

13 7. APS owns 29.1 percent of the Palo Verde Nuclear Generating Station ("Palo Verde").  
14 Other owner participants include Salt River Project, Southern California Edison, El Paso Electric  
15 Company, Public Service Company of New Mexico, and the Los Angeles Department of Water and  
16 Power.

17 8. Palo Verde is licensed by the Nuclear Regulatory Commission ("NRC") pursuant to  
18 42 U.S.C. § 2001, *et seq.*

19 9. APS is responsible for funding 29.1 percent of Palo Verde's decommissioning costs.

20 10. In Decision No. 55931 (April 1, 1988), the Commission ordered APS to establish an  
21 external "qualified" nuclear decommissioning trust fund. In that Decision, the Commission  
22 established control over certain aspects of the trust, including approval of the trustee, the various fund  
23 managers, and the categories of, and limits to, permissible classes of investments for the trust. To  
24 enable the trust fund to qualify for favorable tax treatment under the Internal Revenue Code and IRS  
25 regulations, the Commission had to specifically apportion the total amount of APS' annual  
26 contribution to each of the three Palo Verde Units.

27 11. The Commission approved RCM as the first fixed-income fund manager in Decision  
28 No. 56384 (March 9, 1989). When RCM reached its original \$50 million limit, the Commission

1 authorized an equity fund manger, MCM, in Decision No. 58675 (June 22, 1994). In Decision No.  
2 60098 (March 19, 1997), the Commission approved a second fixed-income manager, DIA. The  
3 Commission approved the current trustee for the three investment funds, Mellon Bank, in Decision  
4 No. 57436 (June 19, 1991).

5 12. In Decision No. 60098, the Commission increased the equity funding limit from \$50  
6 million to \$150 million. The fixed-income funds remained capped at contribution limits of \$50  
7 million each. The fund caps were consistent with the Commission's approved overall 60/40  
8 equity/debt investment goal in Decision No. 60098.

9 13. The Commission raised the fixed-income decommissioning fund contribution limit to  
10 \$75 million for each fund in Decision No. 64393 (January 31, 2002).

11 14. APS based its selection of NISA to replace RCM on: 1) its experience in nuclear  
12 decommissioning fixed-income investments as measured both by the amount of decommissioning  
13 trust fund dollars under management and the number of individual nuclear utility clients; 2) its  
14 specialized tax expertise in this unique area of tax law that would optimize after-tax returns to the  
15 fund; and 3) its knowledge of all ongoing decommissioning legislation, applicable tax regulations,  
16 and other factors affecting the such funds. APS also considered NISA's fee schedule, which is below  
17 those of RCM, to be reasonable.

18 15. Of the three finalists, NISA had the longest fixed-income decommissioning track  
19 record (14 years), the most fixed-income decommissioning funds under management (\$2.8 billion)  
20 and the largest number of fixed-income decommissioning fund clients (16).

21 16. APS believes NISA's tax optimizing strategies to be the best and most detailed of the  
22 three firms. NISA analyzes each individual trade or transaction for optimum after-tax return. APS  
23 asserts that NISA's huge commitment to nuclear decommissioning fund management (almost half its  
24 business) has garnered it a reputation as one of the nation's most knowledgeable firms regarding both  
25 existing and proposed legislation, as well as regulatory and other factors that may affect nuclear  
26 decommissioning fund investments.

27 17. Staff reviewed the proposals and presentation materials of PIMCO, D&P and NISA  
28 and contacted the Director of Taxable Client Services of NISA to confirm data and obtain audited

1 financial statements. After reviewing all of the information provided by APS and the various fund  
2 mangers, Staff believes APS' request to approve NISA as the successor to RCM is reasonable and  
3 recommends that it be approved.

4 **CONCLUSIONS OF LAW**

5 1. APS is a public service corporation within the meaning of Article XV of the Arizona  
6 Constitution and A.R.S. §40-285.

7 2. The Commission has jurisdiction over APS and the subject matter of the application.

8 3. It is reasonable and in the public interest to approve and authorize the appointment of  
9 NISA to replace RCM as the second Palo Verde fixed-income decommissioning fund manager, with  
10 DIA remaining as the other authorized fixed-income decommissioning fund manager.

11 4. In approving this Order, the Commission specifically retains its authority over changes  
12 in fund investment managers, fund contribution limits and in the apportionment method of the fund  
13 and both NISA and DIA shall remain subject to the funding limitations imposed on RCM and DIA in  
14 Decision No. 64393.

15 **ORDER**

16 IT IS THEREFORE ORDERED that Arizona Public Service Company's request for approval  
17 and authorization to appoint NISA Investment Advisors as the second fixed-income Palo Verde  
18 decommissioning fund manager is approved.

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1 IT IS FURTHER ORDERED that Decision Nos. 55931, 56384, 57426, 5675, 60098 and  
2 64393 shall remain in effect to the extent they are not inconsistent with this Decision.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
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7 CHAIRMAN

COMMISSIONER

COMMISSIONER

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9 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
10 Secretary of the Arizona Corporation Commission, have  
11 hereunto set my hand and caused the official seal of the  
12 Commission to be affixed at the Capitol, in the City of Phoenix,  
13 this \_\_\_\_ day of \_\_\_\_\_, 2002.

14 BRIAN C. McNEIL  
EXECUTIVE SECRETARY

15 DISSENT \_\_\_\_\_  
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1 SERVICE LIST FOR: ARIZONA PUBLIC SERVICE COMPANY

2 DOCKET NO.: E-01345A-02-0125

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